#8

PTO/SB/61 (11-03)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)

Docket Number (Optional): ADA.001.CP1

First Named Inventor: DANIEL MERCOLA et al. Art Unit: 1642

Application Number: 10/032,260 Examiner: UNKNOWN

Filed: 20 DECEMBER 2001

Title: "ISOLATION AND IDENTIFICATION OF CONTROL SEQUENCES AND GENES MODIFIED BY TRANSCRIPTION FACTORS"

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9382.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United Sates Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.
NOTE: A grantable petition requires the following items:
(1) Petition fee.
(2) Reply and/or issue fee.
(3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
(4) Adequate showing of the cause of unavoidable delay.

1. Petition fee

☒ Small entity – fee $ 55.00 (37 CFR 1.17(l)). Applicant claims small entity status. See 37 CFR 1.27. (CHECK NO.: 1546)

☐ Other than small entity – fee $_____ (37 CFR 1.17(l)).

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE DISCLOSURES (identify the type of reply):

☒ has been filed previously on 8 MAY 2002.

☒ ~~is enclosed herewith~~. (A COPY IS ENCLOSED HEREWITH)

B. The issue fee of $ _____

☐ has been filed previously on _____.

☐ is enclosed herewith.

02/18/2004 AWONDAF1 00000051 10032260
01 FC:2402 55.00 OP

[Page 1 of 3]

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)

3. Terminal disclaimer with disclaimer fee

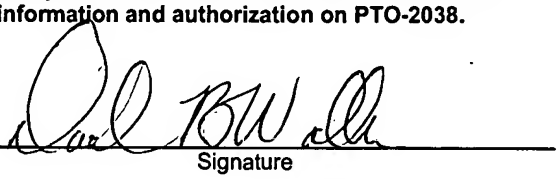
☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $ _____ for a small entity or $ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

13 FEBRUARY 2004
Date


Signature

(858) 457 2014
Telephone Number

DAVID B. WALLER
Typed or printed name

43,978
Registration Number, if applicable

5677 OBERLIN DRIVE, SUITE 214
Address

SAN DIEGO CA 92121
Address

Enclosure
☒ Fee Payment
☒ Reply
☐ Terminal Disclaimer Form
☒ Additional sheets containing statements establishing unavoidable delay SEE ATTACHED
☐ _____

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. EXPRESS MAIL NO.: EV393143736US

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

13 FEBRUARY 2004
Date


Signature

DAVID B. WALLER
Typed or printed name of person signing certificate

PTO/SB/61 (11-03)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

13 FEBRUARY 2004
Date

Signature

43,978
Registration Number, if applicable

DAVID B. WALLER
Typed or printed name

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

— PLEASE SEE ATTACHED —

(Please attach additional sheets if additional space is needed.)

Docket No.: ADA.001.CIP
Express Mail No.: Ev393143736US

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Daniel Mercola *et al.*
Application No.:	10/032,260
Filed:	20 December 2001
Art Unit:	1642

Title: "ISOLATION AND IDENTIFICATION OF CONTROL SEQUENCES AND GENES MODULATED BY TRANSCRIPTION FACTORS"

APPLICANTS' PETITION FOR UNAVIODABLE ABANDONMENT OF A PATENT APPLICATION UNDER 37 CFR §1.137(a)

Mail Stop: Petition
Commissioner for Patents
U.S.P.T.O.
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The following is Applicants' petition to revive application serial no.: 10/032,260 from unavoidable abandonment.

Applicant received a notice of abandonment of patent application serial no.: 10/032,260 under 37 CFR 1.53(f) or (g) dated 6 February 2004 for failure to timely or properly reply to the Notice to File Missing Parts mailed 20 March 2002. The Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures requiring a response within two months of the mailing date was received by applicant on or after 20 March 2002. The notice requested a corrected sequence listing and a disc containing the sequence listing in computer readable form. In compliance with the Office's request, Applicant filed a response to the Notice on 8 May 2002 comprising two discs containing the sequence listing in computer readable form, a copy of the sequence listing, a copy of the Notice to Comply with Requirements for Patent Applications containing Nucleotide Sequence Disclosures, a certificate of mailing (Express Mailing No.: EJ765128186US) and a return postcard. The response was filed forty-nine days from the date of the Notice and within the time specified by the Office for the response. A copy of the response is enclosed for your review. In addition, Applicant has enclosed a copy of the Certificate of mailing, the Express Mailing receipt (serial No.: EJ765128186US) and the receipt

from the united States Postal Service as further evidence that the response was mailed on 8 May 2002 as stated.

In view of this, Applicant respectfully requests that patent application serial no.: 10/032,260 be revived without prejudice. Further, if it is found that the United States Patent and Trademark Office was in error in docketing Applicants response to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence Disclosures that the Office return the petition fee of $55.00. In addition, because of the substantial delays in processing this application and issuance of a Notice of Abandonment, Applicant requests that the prosecution of this application be expedited.

If you have any questions please contact me at (858) 457-2014.

Respectfully submitted,

Date: 13 February 2004

David B. Waller
Registration No. 43,978

David B. Waller & Associates
5677 Oberlin Drive, Suite 214
San Diego, CA 92121

Telephone: (858) 457-2014
Facsimile: (858) 457-2308
E-mail: dwaller@starnetdial.net

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/032,260	12/20/2001	Daniel Mercola	ADA.001CIP1

CONFIRMATION NO. 6405

David B. Waller
Suite 214
5677 Oberlin Drive
San Diego, CA 92121

FORMALITIES LETTER

OC000000007679346

Date Mailed: 03/20/2002

NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES

Applicant is given **TWO MONTHS FROM THE DATE OF THIS NOTICE** within which to file the items indicated below to avoid abandonment. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

- A copy of the "Sequence Listing" in computer readable form has been submitted. However, the content of the computer readable form does not comply with the requirements of 37 C.F.R. 1.822 and/or 1.823, as indicated on the attached copy of the marked -up "Raw Sequence Listing." Applicant must provide a substitute computer readable form (CRF) copy of the "Sequence Listing" and a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d).

For questions regarding compliance to these requirements, please contact:

- **For Rules Interpretation, call (703) 308-4216**
- **To Purchase Patentin Software, call (703) 306-2600**
- **For Patentin Software Program Help, call (703) 306-4119 or e-mail at patin21help@uspto.gov or patin3help@uspto.gov**

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*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center
Initial Patent Examination Division (703) 308-1202
PART 2 - COPY TO BE RETURNED WITH RESPONSE

Docket No.: ADA.001CIP1
Express Mail No.: EJ765128186US

RESPONSE TO NOTICE TO COMPLY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Daniel Mercola *et al.*

EJ765128186US

Application No.: 10/032,260

Filed: 20 December 2001

Title: "ISOLATION AND IDENTIFICATION OF CONTROL SEQUENCES AND GENES MODULATED BY TRANSCRIPTION FACTORS"

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

Honorable Commissioner of Patents and Trademarks
Washington D.C. 20231

Dear Sir:

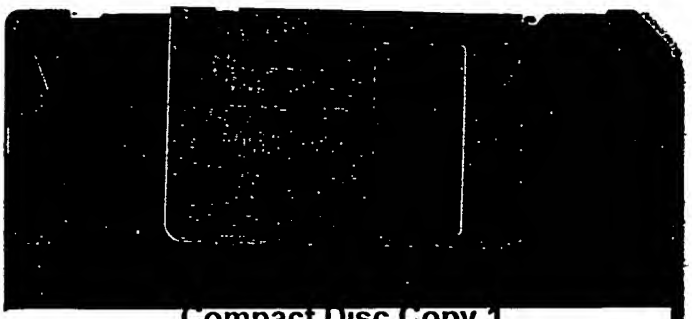
I hereby certify that the enclosures listed below are being deposited with the United States Postal Service "EXPRESS MAIL Post Office to Addressee" service under 37 C.F.R. § 1.10, Mailing Label Certificate No.: EJ765128186US, on 8 May 2002, addressed to: Assistant Commissioner for Patents, Box Patent Applications Washington, D.C. 20231.

Respectfully submitted,

David B. Waller
Patent Agent No.: 43,978

Enclosures:

Notice to Comply part 2, 1Page
Sequence Listing 24 Pages and file copy on Disc plus duplicate
Return Postcard



Compact Disc Copy 1

Name of Inventor: Mercola et al.
Title: Isloation and identification of Control Sequences and Genes Modulated by Transcription Factors
Application No.: 10/032,260
Filing Date: 20 December 2001
Compact Disc Prepared: 8 May 2002
Statement: "The contents of this sequence listing information recorded in computer readable form is identical to the written (On paper or compact disc) sequence listing".

Compact Disc Copy 2

Name of Inventor: Mercola et al.
Title: Isloation and identification of Control Sequences and Genes Modulated by Transcription Factors
Application No.: 10/032,260
Filing Date: 20 December 2001
Compact Disc Prepared: 8 May 2002
Statement: "The contents of this sequence listing information recorded in computer readable form is identical to the written (On paper or compact disc) sequence listing".

Please acknowledge receipt of the following by affixing hereon the Patent and Trademark Office date stamp and returning this card to our office.

Applicant: Daniel Mercola et al.
Serial No.: TBA
Filed: 20 December 2001

For: Isolation and Identification of Control Sequences And Genes Modulated by Transcription Factors

RESPONSE TO NOTICE TO COMPLY

Docket No.: ADA.001CIP1

Notice to Comply part 2, 1Page
Sequence Listing, 24 Pages and file copy on Disc plus duplicate
Return Postcard
Certificate of Express Mailing No. EJ765128186US

David B. Waller & Associates
5677 Oberlin Drive, Suite 214
San Diego, CA 92121

David B. Waller
David B. Waller & Associates
5677 Oberlin Drive, Suite 214
San Diego, CA 92121

ENCINITAS POSTAL STORE
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Sales Receipt

Product Description	Sale Qty	Unit Price	Final Price
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Refunds only per DMM P014
Thank you for your business
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UNITED STATES POSTAL SERVICE™

POST OFFICE TO ADDRESSEE

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Federal Agency Acct. No. or Postal Service Acct. No.

☐ WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

NO DELIVERY ☐ Weekend ☐ Holiday

Customer Signature

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TO: (PLEASE PRINT) PHONE ( )

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FOR PICKUP OR TRACKING CALL 1-800-222-1811 www.usps.gov EMS

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SEQUENCE LISTING

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Pro Ser Leu Leu Ala Ile Lys Thr Ala Asn Phe Val Ala Val Asp Thr
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Glu Leu Ser Gly Leu Gly Asp Arg Lys Ser Leu Leu Asn Gln Cys Ile
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Glu Glu Arg Tyr Lys Ala Val Cys His Ala Ala Arg Thr Arg Ser Ile
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Leu Ser Leu Gly Leu Ala Cys Phe Lys Arg Gln Pro Asp Lys Gly Glu
100 105 110

His Ser Tyr Leu Ala Gln Val Phe Asn Leu Thr Leu Leu Cys Met Glu
115 120 125

Glu Tyr Val Ile Glu Pro Lys Ser Val Gln Phe Leu Ile Gln His Gly
130 135 140

Phe Asn Phe Asn Gln Gln Tyr Ala Gln Gly Ile Pro Tyr His Lys Gly
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Asn Asp Lys Gly Asp Glu Ser Gln Ser Gln Ser Val Arg Thr Leu Phe
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180 185 190

Ile Asp Leu Val Phe Leu Tyr Gln Asn Phe Tyr Ala His Leu Pro Glu
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Ser Leu Gly Thr Phe Thr Ala Asp Leu Cys Glu Met Phe Pro Ala Gly
210 215 220

Ile Tyr Asp Thr Lys Tyr Ala Ala Glu Phe His Ala Arg Phe Val Ala
225 230 235 240

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Gln Arg Ala Ala Gly Ser Pro His Leu Thr Leu Glu Phe Cys Asn Tyr
260 265 270

Pro Ser Ser Met Arg Asp His Ile Asp Tyr Arg Cys Cys Leu Pro Pro
275 280 285

Ala Thr His Arg Pro His Pro Thr Ser Ile Cys Asp Asn Phe Ser Ala
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Tyr Gly Trp Cys Pro Leu Gly Pro Gln Cys Pro Gln Ser His Asp Ile
305 310 315 320

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325 330 335

Arg Arg Arg Arg Arg Glu Lys Arg Lys Arg Ala Leu Leu Asn Leu Pro
340 345 350

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355 360 365

Val Cys Gly Asp Ser Ile Lys Pro Glu Glu Thr Glu Gln Glu Val Ala
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Ala Asp Glu Thr Arg Asn Leu Pro His Ser Lys Gln Gly Asn Lys Asn
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405 410 415

Ala Thr Ser Glu Val Pro Gly Ser Gln Ala Ser Pro Asn Pro Val Pro
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Gly Gly Gly Leu His Arg Ala Gly Phe Asp Ala Phe Met Thr Gly Tyr
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02-17-04

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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/032,260	12/20/2001 RETURNED	Daniel Mercola	ADA.001CIP1

CONFIRMATION NO. 6405

ABANDONMENT/TERMINATION LETTER

OC000000011851726

David B. Waller
Suite 214
5677 Oberlin Drive
San Diego, CA 92121

Date Mailed: 02/06/2004

NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 03/20/2002.

- No reply was received.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (703) 305-9282.Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

A copy of this notice MUST be returned with the reply.

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Initial Patent Examination Division (703) 308-1202
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